IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

COMPANY PETITION 319/2005.

M/s. Power Link Industries ..Petitioners.

V/s.

M/s. Western Hivolts Equip.
Pvt.Ltd. ..Respondent.

Mr R. A. Shaikh for the Petitioner.

None for the Respondent.

CORAM: V.C. DAGA,J.

DATED: 28th FEBRUARY,2007.

P.C.:-

1. Heard the learned counsel for the petitioner. None for the respondent.

2. Perused petition.

3. Petitioner has invoked jurisdiction of this Court under Sections 433 and 434 of the Companies Act, 1956 to seek winding up of "M/s. Western Hivolts Equip. Pvt. Ltd." (hereinafter referred to as "Company").

4. The factual matrix on which petition is based, reveals that petitioner has sold, supplied and delivered to the company, goods as described in paragraph 5 of the petition. The details of which incorporated in Exh.B, suggest

that the value of the goods sold and supplied was in the sum of Rs.6,37,668.15 and accrued interest thereon was also not paid. The debt remained unsatisfied. With the result, the petitioner was required to issue statutory notice dated under Section 434 of the Companies Act, 1956 demanding outstanding dues in respect of which hardly there was any dispute between the parties.

5. The said notice was sent to the registered address of the respondent company by the petitioner. Notice was received by the company.

6. It is brought on record that letter was written by the petitioner to the company calling upon it to pay principal sum in the sum of Rs.6,37,448.15 vide earlier letter dated 8th April,2004. In reply to said letter it appears that cheque of Rs.6 lacks was issued in favour of and remitted to the petitioner. Said cheque was dishonoured for the reasons that the account was closed. It is, thus, clear that the Company has neglected to pay admitted debts and failed to discharge the undisputed

liability of the petitioner.

7. Petitioner having left with no other alternative, invoked jurisdiction of this Court to seek winding up of the company. After admission of this petition, notices were issued to the company. It was served on the Company. However, no reply has been filed to answer the petition or to oppose the same.

8. Inspite of service of the above notice through Advocate on record nobody has appeared on behalf of the company.

9. In the above view of the matter, considering absence of contest, the Company was bound to discharge it's liability set up in the winding up petition. In other words, assertion made in the petition which are supported by the documents placed on record have remained uncontroverted. In that sense the legal presumption that arises against the respondent company that it is unable to pay it's debts has remained unrebutted. The petitioner has made out a case to make order under Section 434 (1) (a) of the Companies Act, 1956. Under these

circumstances, the respondent company is liable to be wound up.

10. In the result, the petition is made absolute in terms of prayer clause (a)and (b) with no order as to costs.

[V.C.DAGA,J]